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Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

Advanced Notice of Proposed Rulemaking Public Notification of Contamination (Log #OS042) (0207Pot1)

The Louisiana Department of Environmental Quality is requesting comments on the following draft proposed regulation that will establish procedures for notifying those members of the public that the department determines are likely to be adversely affected by a release of hazardous substances or other pollutants.

It is the department's intent to incorporate the proposed regulations into the Office of the Secretary Regulations. This is a preliminary step in the rulemaking process. Official rulemaking will be initiated after review and consideration of the comments received on this advanced notice.

In addition to the technical content of the proposed regulation, for the purpose of preparing a Fiscal and Economic Impact Statement as required by law, we specifically request comments on the estimated cost to the public, particularly to property owners, lending institutions, real estate professionals, investors, and other interested parties who could be affected by this rule.

All interested persons are encouraged to submit written comments on the draft proposal. Comments are due by September 30, 2002, and must be sent to Patsy Deaville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884; hand delivered to 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge; sent to FAX number (225) 765-0389; or sent by email to patsyd@deq.state.la.us. Persons commenting should reference this document as Log #OS042.

If you have any questions regarding this document please contact Lou Buatt at (225) 765-0252 or Patsy Deaville at (225) 765-0399.

James H. Brent, Ph.D.
Assistant Secretary

TITLE 33

ENVIRONMENTAL QUALITY

Part I. Office of the Secretary

Subpart 1. Departmental Administrative Procedures

Chapter 1. Public Notification of Contamination

§101. Purpose

A. The purpose of this Chapter is to establish procedures for notifying those members of the public that the department determines are likely to be adversely affected by a release. This Chapter is in addition to any other requirements to provide notice, and nothing in this Chapter shall be construed to relieve the department or any other person from any other requirement set forth in Louisiana Administrative Code, Title 33. Furthermore, nothing in this Chapter shall prevent the responsible party, or the department, from providing additional means for public information and participation consistent with the provisions of this Chapter or any other chapter of the Louisiana Administrative Code, Title 33.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:

§103. Applicability

A. This Chapter applies to releases that exceed the applicable federal or state health and safety standard and pose a risk of adverse human health effects.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:

§105. Effective Date

A. These regulations shall become effective on [upon promulgation – date to be inserted]. These regulations are only applicable to releases that occur on or after [insert effective date of regulations].

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:

§107. Definitions

Administrative Authority—the secretary of the Department of Environmental Quality or his designee or the appropriate assistant secretary or his designee.

Applicable Federal or State Health and Safety Standard—such standards the department, based on its knowledge and expertise, determines are applicable to the release site.

Corrective Action—activities conducted to protect human health and the environment.

Department—the Department of Environmental Quality.

Offsite—areas beyond the property boundary of the release site.

Person—any individual, municipality, public or private corporation, partnership, firm, the State of Louisiana, political subdivisions of the State of Louisiana, the United States government, and any agent or subdivision thereof or any other juridical person, which shall include, but not be limited to, trusts, joint stock companies, associations, commissions, and interstate bodies.

Release—the accidental or intentional spilling, leaking, pumping, pouring, emitting, escaping, leaching, or dumping of hazardous substances or other pollutants into or on any land, air, water, or groundwater. A release shall not include a federal or state permitted release or other release authorized by the department.

Release Site—area within the property boundary of the site where the release has occurred.

Responsible Party—any person required by law or regulation to undertake corrective action at a site.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:

§109. Notification Requirements

A. The department shall provide notification to the public for sites within the department's regulatory jurisdiction, as reasonably determined by the department to be appropriate in accordance with the considerations identified in this Chapter.

B. The department shall issue notice of a release to persons to whom the department determines that the release poses a risk of adverse health effects.

C. The department may prioritize sites for provision of notice, as appropriate, according to the factors identified in this Section, although notice should in all events be given as soon as reasonably practicable.

D. The following chart provides the content and time frame for providing notification.

Public Notice Number	Triggering Event	When to Provide Notice to the Public	Contents of the Public Notice
1	When the department becomes aware of information and determines that a release is likely to have adverse offsite impacts that exceed the applicable federal or state health and safety standard	When an emergency or exigent circumstance exists, notice shall be given as soon as practicable under the circumstances by using any reasonable means or otherwise, within 30 days of the triggering event	Physical address of the release site Description of the contaminant Corrective action efforts Name, phone number, and address of contact person for both the responsible party and the department Other information the department determines is necessary to protect human health and the environment
2	When the department confirms offsite impact that exceeds the applicable federal or state health and safety standard and the department determines that the offsite impact poses a risk of adverse health effects	When an emergency or exigent circumstance exists, notice shall be given as soon as practicable under the circumstances by using any reasonable means or otherwise, within 30 days of the triggering event	Physical address of the release site Description of the contaminant Corrective action efforts Any potential adverse health effects Name, phone number, and address of contact person for both the responsible party and the department Other information the department determines is necessary to protect human health and the environment

E. Procedure for Providing Notice to the Public

1. The public notice required by this Chapter must be:
 - a. communicated in plain language;
 - b. printed and formatted in a manner that promotes the purpose of the notice when the notice is printed or posted;
 - c. free of language that nullifies the purpose of the notice;
 - d. displayed in a conspicuous way when printed or posted; and
 - e. sized 3 inches x 5 inches, at a minimum, in newspapers, parish journals, etc., when published in such publications.

2. The public notice shall be provided by means reasonably calculated to reach those members of the public directly affected by the release, as determined by the department, and may include, but not be limited to:

- a. public notice in local newspapers;
- b. block advertisements;
- c. public service announcements;
- d. direct mailings;
- e. personal contacts;
- f. press releases;
- g. press conferences; and
- h. posting on the department's website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28: